

ADAM WANG. Bar No. 201233
LAW OFFICES OF ADAM WANG
12 South First Street, Suite 613
San Jose, CA 95113
Tel: (408) 292-1040
Fax: (408) 416-0248
waqw@sbcglobal.net

Attorney for Plaintiffs
BAO YI YANG, WEI WANG & LIANG-XIAN FU

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

BAO YI YANG, ET AL,

Plaintiffs,

vs.

SHANGHAI GOURMET, LLC ET AL

Defendants

Case No.: C07-04482 JL

PLAINTIFFS' CASE MANAGEMENT
STATEMENT

In accordance with the Standing Order for All Judges of the Northern District of California, the parties in this matter hereby submit this Joint Case Management Conference Statement.

1. JURISDICTION AND SERVICE

The basis for the Court's subject matter jurisdiction over Plaintiffs' claims is the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as alleged in the Complaint.

Because Defendants counsel refused to accept service on behalf of new individual Defendants Xu Liang Shen and tBo Juan Liu, these two defendants remain to be served. Plaintiffs anticipate that these defendants will be served over the course of the week of September 1, 2008.

There are no existing issues regarding personal jurisdiction or venue.

2. FACTS

1 Plaintiffs Bao Yi Yang, Wei Wang and Liang-Xian Fu were employed by Shanghai
 2 Gourmet as restaurant workers during the four year period prior to the filing of his Complaint. In
 3 this action, Plaintiffs seek overtime and other wage and hour claims against Defendants under
 4 the authority of both federal and California laws.

5 The principal factual issues in dispute are:

- 6 1. Whether Plaintiffs have been paid less than minimum wage;
 - 7 2. Whether Plaintiffs are owed any overtime wages.
- 8 Defendants deny that Plaintiffs are owed any back wages.

9 **3. LEGAL ISSUES**

10 Plaintiffs assert that Defendants failed to pay them overtime pay in violation of California
 11 Labor Code §§ 501 and 1194 as well as in violation of the Fair Labor Standards Act, 29 U.S.C.
 12 §§ 201 *et seq.* Plaintiffs further allege that Defendants violated California Labor Code § 226.7
 13 by failing to provide meal and rest periods to Plaintiffs. Plaintiffs further allege that Defendants
 14 failed to pay Plaintiffs their wages upon termination in violation of California Labor Code § 201.
 15 Finally, Plaintiffs seek restitution of overtime wages in accordance with California Business &
 16 Professions Code § 17200.

17 **4. MOTIONS**

18 The parties anticipate the filing of the following motions:

- 19 (a) Defendants' Motions for Partial Summary Judgment and/or Summary Judgment
 20 to dismiss claims against individual defendants;
- 21 (b) Plaintiffs' Motion for Summary Adjudication
- 22 (c) Plaintiffs' Motion for Attorney's Fees.

23 **5. AMENDMENT OF PLEADINGS**

24 Plaintiffs' Motion for Leave to File Second Amended Complaint is pending. Plaintiffs do
 25 not anticipate any further amendments.

6. EVIDENCE PRESERVATION

Defendants have been notified by their counsel of the obligation to preserve all electronically stored or other evidence, but it is not clear if Defendants have taken steps to do so because the business has been sold.

7. DISCLOSURES

Plaintiffs have provided their initial disclosures.

8. DISCOVERY

Defendants have taken depositions of Plaintiffs Wei and Bao Yi Yang. Only two depositions remain to be taken among parties—Plaintiff Liang-Xian Fu and Defendant Xu-Liang Shen. Mr. Shen's deposition is noticed for September 17, 2008. Plaintiffs offer Defendants to take Mr. Fu's deposition on October 2, 2008.

9. CLASS ACTIONS

N/A

10. RELATED CASES

There are no related cases or proceedings pending before another Judge of this Court or before another Court or administrative body.

11. RELIEF

Plaintiffs seek monetary damages.

12. SETTLEMENT AND ADR

ADR is complete.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

Parties consent to the assignment of this to a magistrate judge for all further proceedings.

14. OTHER REFERENCES

Plaintiffs do not believe that this case is not suitable for a binding arbitration and do not agree on any other reference.

1 **15. NARROWING OF ISSUES**

2 Plaintiffs do not anticipate an agreement to narrow issues. .

3 **16. EXPEDITED SCHEDULE**

4 Plaintiffs do not believe that this case can be put on an expedited schedule.

5 **17. SCHEDULING**

6 Up to this date, Plaintiffs and propounded, and Defendants have produced written
7 discoveries concerning liabilities and damages. The discoveries remaining are depositions of
8 Plaintiff Mr. Fu and Defendant Mr. Shen; and discoveries concerning piercing corporate veil and
9 fraudulent conveyance with respect to cause of actions concerning individual liabilities. If the
10 Court grants Plaintiffs' motion for leave to file the Second Amended Complaint, Plaintiffs may
11 proceed to trial quickly and request the following trial schedule:

12 (a) Fact discovery cutoff on October 31, 2008;

13 (b) Last day of hearing on dispositive motion on December 10, 2008;

14 (c) Trial: January 28, 2009

15 If the Court denies Plaintiffs' motion for leave to file a Second Amended Complaint,
16 Plaintiffs request that Court schedule another case management conference, in that case Plaintiffs
17 will need discoveries concerning Defendants financials addressing individual liabilities under
18 theories of piercing veil and fraudulent conveyance.

19 **18. TRIAL**

20 Parties have requested a jury trial. Plaintiffs estimate length of trial is 7 court days.

21 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

22 Plaintiffs have no one to report other than parties themselves.

23 **20. OTHER MATTERS**

24 None.

1 Dated: August 28, 2008

By: /s/ Adam Wang

ADAM WANG

Attorneys for Plaintiffs

2
3
4 DATED: November 23, 2007

By: /s/Arthur Liu

Arthur Liu

Attorneys for Defendants